

## SUBCHAPTER P—OBTAINING DOD INFORMATION

### PART 336—PUBLICATIONS OF PROPOSED AND ADOPTED REGULATIONS AFFECTING THE PUBLIC

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AUTHORITY: 10 U.S.C. 125.

#### § 336.1 Purpose.

This part:

(a) Establishes a policy and procedure by which the Department of Defense will invite the comments of the public on those of its proposed regulations and other types of rulemaking as described hereafter which originate within the Department of Defense as a requirement of general applicability and future effect designed to implement, interpret, or prescribe law or policy, or practice or procedure requirements of a component. This requirement applies to those regulations which constitute the authority for actions having a substantial and direct impact on the public when consistent with other responsibilities of the Department for the efficient and responsible conduct of public business.

(b) Implements the provisions of 5 U.S.C. 552 relating to the kinds of regulations that must be published in the FEDERAL REGISTER after they are adopted.

[40 FR 4911, Feb. 3, 1975. Redesignated at 56 FR 64482, Dec. 10, 1991]

#### § 336.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereinafter referred to singularly as a “DoD component” or collectively as “DoD components”).

(b) These provisions are applicable to those directives, instructions, regula-

tions, policy memoranda, manuals, and other forms of rulemaking (hereinafter referred to as “regulations”) that have a substantial and direct impact on the public. Only a regulation which must be published in the FEDERAL REGISTER after its adoption in accordance with 5 U.S.C. 552 (as implemented in § 336.5) comes within the requirement that it be evaluated to determine whether it will have the substantial and direct impact on the public that warrants an invitation for public comment prior to its adoption. An implementation by a subordinate component of a regulation adopted by a component at a higher level within the Department of Defense is not deemed to “originate” a requirement of general applicability and future effect, and therefore, does not fall within the scope of the obligation to invite public comment on its provisions.

(c) The determination by the component originating a regulation shall be final and conclusive in determining whether a regulation or a proposed regulation comes within the purview of this part. Consideration shall be given, however, to the definition of “rulemaking” found in 5 U.S.C. 551 as it relates to the requirements of 5 U.S.C. 553 in making this determination.

(d) The requirement for inviting public comment on a proposed regulation shall not be deemed applicable to any proposed regulation coming within one or more of the following exemptions or exceptions to the rulemaking procedures set forth in 5 U.S.C. 553.

(1) Any matter pertaining to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy.

(2) Any matter relating to (i) agency management, (ii) agency personnel, or (iii) public contracts (e.g., the Armed Services Procurement Regulation), including nonappropriated fund contracts.

(3) Any matter involving (i) interpretative rules, (ii) general statements of